

**VOLUNTARY CLEANUP CONTRACT
05-5622-NRP**

**IN THE MATTER OF
METAL TRADES SITE, CHARLESTON COUNTY
and
SHIPYARD CREEK HOLDINGS, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Shipyard Creek Holdings, LLC, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the property located at 1905 Pittsburgh Avenue, Charleston, South Carolina. The Property is identified as Tax Map Parcel # 466-00-00-008 and includes 17.94 acres. The Property is bounded generally by Shipyard Creek to the east, the Macalloy Superfund Site to the north, Palmetto Pile Drivers to the west and south with Republic Construction (former Pre-Stress Concrete) also to the south bounded by Shipyard Creek. The terms and conditions of this Contract shall be consistent with the "Information and Certification" submitted July 5, 2005, by Shipyard Creek Holdings, LLC, which is incorporated into this Contract and attached as Appendix A.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.

- A. "SCH" shall mean Shipyard Creek Holdings, LLC.
- B. "Bona Fide Prospective Purchaser" shall mean a person, or a tenant of that person, who acquires ownership of a facility after the date of enactment of the Brownfields Amendments (January 11, 2002), and by a preponderance of the evidence establishes the following:
 - a. Disposal at the facility occurred prior to acquisition;

- b. The person made all appropriate inquiry into previous ownership and uses of the facility in accordance with generally accepted practices and in accordance with the new standards contained in CERCLA Section 101(35)(B);
 - c. The person provides all legally required notices with respect to the hazardous substances found at the facility;
 - d. The person exercises “appropriate care” with respect to the hazardous substances found at the facility by taking “reasonable steps” to:
 - i. Stop any continuing releases;
 - ii. Prevent any threatened future release; and
 - iii. Prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance;
 - e. The person provides full cooperation and access to the facility to those authorized to conduct response actions;
 - f. The person is in compliance with any land use restrictions and does not impede the effectiveness or integrity of any institutional control;
 - g. The person complies with any information request or administrative subpoena under CERCLA; and
 - h. The person is not potentially liable for response costs at the facility or “affiliated” with any such person through:
 - i. Direct or indirect familial relationship, or
 - ii. Any contractual, corporate or financial relationship (excluding relationships created by instruments conveying or financing title or by contracts for sale of goods and services).
- C. “Contract” shall mean this Voluntary Cleanup Contract.
- D. “Department” shall mean the South Carolina Department of Health and

Environmental Control.

- E. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants (as defined herein), present or existing on or under the Site as of the execution date of this Contract.
- F. "Hazardous Substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).
- G. "Non-Responsible Party" shall mean any party which is neither:
 - a. A responsible party at the time the voluntary cleanup contract is signed, nor
 - b. A parent, subsidiary of, or successor to a responsible party. Non-Responsible Parties may include lenders, economic development agencies, fiduciaries, trustees, executors,

administrators, custodians, and subsequent holders of a security interest.

- H. "Oversight Costs" shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- I. "Pollutant or Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- J. "Property" shall mean the 17.94 acres identified on Tax Map 466-00-00-008 that is subject to ownership, prospective ownership, or possessory or contractual interest of a Responsible Party or a Non-Responsible Party.
- K. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- L. "Responsible Party" shall mean:
 - a. The owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility;

- b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;
 - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances; and/or
 - d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, as defined in CERCLA Section 101 (38), or sites selected by such person from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.
- M. "The Site" shall mean the facility located at 1905 Pittsburgh Avenue, Charleston, South Carolina, and all areas where a contaminant has been released, deposited, stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).
- N. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002).
- O. "Work Plan" shall mean the plan for additional response actions to be conducted at the Property as described in Paragraph 5 of this Contract.

2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:

A. The history of the Property is as follows:

Ownership and Dates of Ownership

Charleston Marine Terminal, LLC	3/17/2000 – Present
Metal Trades, Inc.; Norstate Company, a Partnership And Shipyard River Terminal Company	10/30/1986 - 3/17/2000
Union Carbide Corporation	5/1/1975 - 10/30/1986
North State Lumber Company	circa 1900 - 1975
Edisto Phosphate Company	circa 1883 - circa 1900

Use of the Property

Charleston Marine Terminal, LLC: The property is currently unused except for the dock area on Shipyard Creek leased by a dredging company. During the September 1999 Phase I update by GEL, International Pipe and Welding was conducting welding and painting activities in and outside the warehouse. Even though this Property is owned by Charleston Marine Terminal, LLC, the Property continues to be known as Metal Trades.

Metal Trades, Inc: Metal Trades is identified as a small quantity generator of hazardous waste under the Resource Conservation and Recovery Act (RCRA). It is reported that Metal Trades, Inc. operated a ship repair business at the Property from 1991 until 1995 utilizing a dry dock in Shipyard Creek. Metal Trades states that they used the upland Property strictly to store equipment such as pipes, fittings, and other materials; no chemicals were stored. In the late 1990s, a portion of the Property was used by Futrex for development of a monorail pilot project, which has been discontinued. Futrex had three mobile trailers used for offices while the warehouse remained unoccupied. A model Futrex monorail was erected on the Property.

Union Carbide Corporation: from the mid 1960s through the mid-1970s, asphalt contractors occupied the Union Carbide site, which consisted of the

Property and parcels now owned by Palmetto Pile Driving and Republic Construction. From 1976 -1985 Palmetto Pile Driving and Republic Construction used the Property as a dry dock facility.

North State Lumber Company used the Property for milling of lumber. A machine shop was located on the southeastern corner adjacent to Shipyard Creek. A DC (direct current) electric light generating plant was located on North State Lumber Company property, but was reportedly on the parcel to the south now occupied by Republic Construction.

Edisto Phosphate Company: a fertilizer manufacturer. The Edisto Phosphate Company processed bulk quantities of materials containing soluble metals and inorganic nutrients into fertilizer. Advertisement for the Edisto Phosphate Company states that the manufacturer produced Acid Phosphate, Ash Element, Ammoniated Fertilizers, Ground Bone, and imported German Kainit. Located on the site were an acid chamber, bagging and shipping store house of manufactured stock, boiler, area for rock drying stock, and other necessary paraphernalia. A creosote works area is identified on the 1888 Sanborn Map as located 400 feet north of the northwestern corner of the Acid Chamber.

Physical Condition of the Property

On the Property is a warehouse, two storm water detention ponds, two marine cranes, a gravel storage yard and a laydown yard alongside Shipyard Creek for dredging equipment. The unoccupied warehouse has office space, a photograph developing room (dark room), and a secure chemical storage area. An above ground storage tank (AST) and drums have been stored in the warehouse. Equipment and debris (refrigerator freezer unit) have also been stored outside adjacent to the western wall of the warehouse. Additional debris (truck, boat, mobile home) and drums, can be found in other areas of the Property. Surficial staining from petroleum was observed in the dredge equipment laydown yard along with an open bucket containing oil and

water and gas cylinders. There are three office trailers and three pole-mounted transformers, owned by SCE&G, on the Property. Jurisdictional salt water and fresh water wetlands have been identified on the Property.

It is noteworthy that the U. S. Department of Housing and Urban Development has designated the Property to be within a Renewal Community allowing for Renewal Community Employment Tax Credits and Commercial Revitalization Deductions. Also, the City of Charleston has included the Property in its Brownfields Assessment Grant Area although no assessment of this property has been performed using this grant funding.

Environmental Condition

According to the Phase I Environmental Site Assessment (ESA) conducted by General Engineering Laboratories, Inc. (GEL) dated January 1999, the Property has not been adversely impacted by former or current site activities. This Phase I states that LAW Environmental Consultants (LAW) collected soil and groundwater samples across the Union Carbide facility in 1985, which included the Property plus the parcels now occupied by Palmetto Pile Driving and Republic Construction. Groundwater samples were analyzed for: volatile organic compounds (VOCs), fertilizer nutrients, polychlorinated biphenyls, and metals. Soils impacted with metals were excavated from a limited area of the Republic Construction parcel. Groundwater indicated impact from metals. The impact to groundwater was not addressed. Their conclusion was that past activities had not significantly impacted the Property.

The January 1999 GEL Phase I further states that in October 1993, GEL collected groundwater samples from five temporary monitoring locations to determine whether operations by Pre-Stress Concrete (from 1993 known as Republic Construction) had impacted the Property. The groundwater samples were analyzed for VOCs, base/neutral extractable organic compounds, and

certain metals. The sample collected in the area nearest the former pesticide manufacturer was analyzed for pesticides and for herbicides. No constituents of concern were detected.

In addition the January 1999 GEL Phase I states that in September 1998, GEL conducted a limited subsurface investigation on the behalf of Metal Trades, Inc. to determine whether activities at the adjacent Macalloy facility had impacted the Property. Two monitoring wells were installed on the northern Property boundary as depicted on Figure 2 of the January 1999 Phase I. No constituents of concern were identified in the shallow soil, sediment or groundwater samples.

In July 2005, a Phase I ESA (without title search) was prepared for SCH by S&ME. This Phase I reviewed the history and uses of the Property and the previous environmental assessment. The conclusion of this Phase I is that past activities such as phosphate/fertilizer production, a lumber mill and ship repair operations may have had an impact but no significant impact has been discovered or detected.

On 26 July 2005 representatives of the Department's Division of Site Assessment and Remediation, along with SCH representatives, conducted a reconnaissance across the Property. At that time Department personnel collected a magenta colored surface soil sample near Shipyard Creek to be screened for metals using X-Ray Fluorescence (XRF). The XRF detected elevated concentrations of: barium, cobalt, chromium, manganese, and zinc that indicate a release has occurred from past activities on the Property. It is likely that the magenta colored soils and elevated metals can be attributed to activities of the Edisto Phosphate Company.

- B. SCH proposes to use the property, possibly in conjunction with adjoining properties, in one or more ways in support of a marine industrial park, which may involve repair of marine vessels and related components within controlled, indoor space, and/or in support of a marine terminal for the transport or staging of marine cargo to serve the

local shipping industry. These uses will place currently dormant property back into use in support of the Port of Charleston, consistent with the historic nature of this geographic area.

3. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its Non-Responsible Party lenders, parents, subsidiaries, successors and assigns, and upon any successor agency of the State of South Carolina that may have responsibility for and jurisdiction over the subject matter of this Contract.

4. SCH is a general partnership organized under the laws of South Carolina with its principal place of business located at 17 Lockwood Drive, 2nd Floor, Charleston, South Carolina 29401. SCH is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property. SCH has had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.

5. SCH agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Property that is consistent with the technical intent of the National Contingency Plan. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

A. SCH shall assess surface/subsurface soil and sediments to characterize the nature and extent of any release of hazardous substances from activities conducted on the Property. SCH shall characterize any impact to soil through the collection of continuous cores from soil borings distributed on a grid pattern across the Property to determine whether slag from the phosphate mill is present on the Property. The direct push technology (DPT) or hand auger

borings shall extend through the vadose zone to the groundwater table interface. The Work Plan shall propose details such as grid locations, sampling interval and expected depth. The Work Plan shall propose a sampling grid across the entire Property with a tighter grid distribution in the southeastern portion due to past activities. The Work Plan shall propose field screening for metals, semi-volatile organic compounds (SVOCs), and for pH on all soil and sediment samples and at each boring location. SCH shall select appropriate analytical parameters for each sample based on the field screening results and the minimum analytical parameters identified for each area of the Property listed below. In addition a minimum of 20% of the soil and sediment samples from each area identified below shall be analyzed for all parameters on the EPA Target Analyte List and Target Compound List (TAL/TCL). Assessment shall target the potential source and receptor areas identified as:

- a. The Edisto Phosphate Company operations were located in the southeastern portion of the Property as depicted on the 1888 and 1902 (revised 1944) Sanborn Maps provided in the 2005 Phase I by S&ME. In addition to the evaluation of the presence of slag, SCH shall characterize any impact to soil through the collection of surface soil (0-1 foot below ground surface) and subsurface soil (greater than two feet below ground surface) in the portion of the Property used by the Edisto Phosphate Company. Moreover, a minimum of three (3) soil samples from the Acid Chamber area used by the Edisto Phosphate Company shall be analyzed for TAL/TCL based on field screening results. The remaining samples collected from the eastern portion of the Property depicted on the 1884, 1888, and 1904 Sanborn Maps as part of the Edisto Phosphate Company shall be analyzed for RCRA metals, at a minimum. If this sampling and analysis does not delineate the contamination, additional samples may be required to characterize the extent of a release.
- b. The North State Lumber Company used the same southeastern portion

of the property for milling activities. A Machine Shop is shown on the 1902 (revised 1944) Sanborn Map as located adjacent to Shipyard Creek in the southernmost corner of the Property. SCH shall assess surface soil and subsurface soil to characterize the nature and extent of any release of hazardous substances to soil in the Machine Shop area. The Work Plan shall propose details such as locations, sampling interval and expected depth. At a minimum, analytical parameters shall include VOCs, SVOCs, and metals. If this sampling and analysis does not delineate the contamination, additional samples may be required to characterize the extent of a release.

- c. Creosote Works is identified on the 1888 Sanborn Map as located approximately 400 feet north of the northwestern corner of the Edisto Phosphate Company's Acid Chamber. The Work Plan shall propose details such as locations, sampling interval and expected depth. At a minimum, analytical parameters shall include VOCs, SVOCs, and metals. If this sampling and analysis does not delineate the contamination, additional samples may be required to characterize the extent of a release.
- d. A Warehouse and Adjacent Equipment Storage are identified in the Phase 1 as located on the western portion of the Property. The Work Plan shall propose details such as locations, sampling interval and expected depth for the areas outside the warehouse used for painting, storage and/or debris. Analysis shall be appropriate for the activity conducted in that area. At a minimum, analytical parameters for all samples shall include RCRA metals. If this sampling and analysis does not delineate the contamination, additional samples may be required to characterize the extent of a release.
- e. Additional Areas around the Property that shall also be targeted include the Dredge Equipment Laydown Area, drum storage areas and stained soils as

depicted on GEL Figure 1 entitled Site Map dated 1999. The Work Plan shall propose details such as locations, sampling interval and expected depth for these specific areas. Analysis shall be appropriate for the activity conducted in that area. If this sampling and analysis does not delineate the contamination, additional samples may be required to characterize the extent of a release.

- f. Receptor Areas for contaminant runoff from the property include two detention ponds and freshwater wetland areas. Sediment samples shall be collected from each of these areas, field screened and sent for laboratory analysis for appropriate parameters based on the field screening results. At a minimum, analytical parameters for all samples shall include RCRA metals.

- B. Soil quality results shall be compared to EPA Region IX Preliminary Remediation Goals (PRGs) for residential and industrial exposure, including Soil Screening Levels for Contaminant Migration to Groundwater (SSLs) with a dilution/attenuation factor (DAF) of 1.

- C. Should the results of assessment activities (as described above) indicate that hazardous substances exist in soil on the Property in excess of appropriate risk-based standards or appropriate standards for migration to groundwater, SCH agrees to take reasonable steps, approved by the Department, to address the soil contamination in a manner that is protective of human health and the environment.

- D. SCH shall assess groundwater quality and flow direction across the Property to characterize the nature and extent of any release of hazardous substances on the Property. The groundwater assessment

shall include the installation and sampling of a monitoring well at or downgradient of the Acid Chamber, the Machine Shop, the Creosote Works, the Warehouse and the Dredge Equipment Laydown Area, at a minimum. The Work Plan shall propose specific locations and construction of monitoring wells designed to detect any release of hazardous substances considering site history and present conditions.

Analytical parameters shall be proposed in the Work Plan based on the former activities at or near each location (and as specified below). A minimum number of groundwater samples shall be analyzed for all parameters on the EPA Target Analyte List and Target Compound List (TAL/TCL). At least one groundwater sample from the Acid Chamber area, one sample from the Machine Shop area and one sample from the Creosote area shall have TAL/TCL analysis. The remaining groundwater samples shall be analyzed for pH, VOCs, SVOCs and RCRA metals at a minimum.

- E. Groundwater results will be compared to the maximum contaminant levels (MCLs) established by South Carolina Regulation 61-68 Water Classifications and Standards.
- F. Based on the results of this assessment, additional investigation may be required to determine the extent of contamination, and to identify any remedial actions that may be necessary for the intended use of the property to include groundwater monitoring.

6. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the South Carolina certified analytical laboratory, and SCH's contact person(s) for matters relating to this Contract. SCH will notify the Department in writing of changes in the contractor or laboratory. Attached to the Work Plan but under separate cover shall also be a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The Department will review the Work Plan and will

notify SCH in writing of any deficiencies in the Work Plan, and SCH shall respond in writing within thirty (30) days to the Department's comments.

7. Within thirty (30) of Work Plan approval and once a month thereafter, SCH shall submit to the Department's project manager a written progress report that must include the following: (a) actions taken under this Contract during the previous reporting period; (b) actions scheduled to be taken in the next reporting period; (c) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (d) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

8. As provided for by S.C. Code Ann. § 44-56-200 and S.C. Code Ann. § 44-56-750 (D) (2002), SCH shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice.

9. Two (2) years after the execution date of this Contract, SCH shall provide the Department with the following information concerning the new operation at the Property: the number of jobs created; the amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; total investment in the site; and any other information that demonstrates that the activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.

10. Subject to the provisions of Paragraph 18 of this Contract, nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, that the Department may have against any person, firm, corporation, potentially responsible

party, or other entity not a signatory of this Contract.

11. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than SCH to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law. SCH acknowledges that it is acquiring property where response actions may be required.

12. Upon written notification to the Department, the rights and obligations of this Contract shall be assignable to a new purchaser, lessee, parent, subsidiary, or successor, but only to the extent that the new purchaser, lessee, parent, subsidiary, or successor has never been a Responsible Party at the Site.

13. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). SCH shall ensure that a copy of this Contract is provided to any current lessee or sublessee on the Property as of the execution date of this Contract. SCH shall also ensure that any subsequent leases, subleases, assignments or transfers of the Property occurring during SCH's ownership of the Property are consistent with this Paragraph.

14. SCH shall preserve all drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, SCH shall notify the Department of their location and provide the Department with an opportunity to inspect any

materials or copy any documents at the Department's expense.

15. SCH shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by SCH pursuant to this Contract.

16. The Department and SCH recognize that public participation is an important component of the Voluntary Cleanup Contract in order to further public acceptance of the project. The Department and SCH will undertake necessary steps to foster opportunities for the public to be aware of the project. Specific functions of each signatory party to the Contract are as follows:

- A. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002) as outlined below:
 - a. Upon signature of this Contract by SCH, the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the affected community. A thirty-day period following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.
 - b. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be done solely at the Department's discretion.
 - c. A public informational meeting will be held if requested by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any

time during the thirty-day comment period. In the event that a public meeting is deemed necessary, the Department will provide approximately two weeks advance notice of the meeting to the public and will extend the public comment period at least through the end of the day following the public meeting. The Department will not execute the contract during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the site at any time after the contract is executed until the certificate of completion is issued.

- B. SCH agrees to enhance the public knowledge of the site response activities by:
- a. Erecting a sign(s) at each entrance onto the reference property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one day after publication of any public announcement about the site placed by the Department in any newspaper of general circulation in the community.
 - b. The sign will state "Voluntary Cleanup Project by Shipyard Creek Holdings, LLC under Voluntary Cleanup Contract 05-5622-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the NRP contract and contact information for a representative(s) of SCH and the Department. All required lettering on the sign must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the subject property.
 - c. Within 10 days after erecting the sign, SCH shall furnish to the Department photographs of the sign along with a site location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly-accessible road, waterway, etc. and should include an appropriately sized scale reference so that Department may determine the size of the sign and effectiveness of the lettering. SCH agrees to revise the sign if the Department determines the sign is not legible.

- d. SCH must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract period until a certificate of completion is issued on the site.
 - e. In the event that any sign must be removed to accommodate building or grading activities, SCH shall replace the sign within two days. If the sign cannot be restored to the original location, SCH may relocate it to another location meeting the conditions specified above.
- C. All costs incurred by the Department for public participation [e.g., public notice(s), building and equipment rental(s) for public meetings, etc.] will be paid by SCH.

17. The Department and SCH agree that the following are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 and S.C. Code Ann. § 44-56-750 (2002): SCH, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.

18. The Department and SCH agree that the following are entitled to protection from third-party claims for equitable relief or damages relating to "existing contamination" at the Site, as provided by S.C. Code Ann. § 44-56-750 (2005): SCH, its Non-Responsible Party lenders, signatories, parents, subsidiaries and successors. This limitation on liability does not apply to any contamination caused by SCH or its lenders, signatories, parents, subsidiaries, or successors. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this contract is lawfully terminated by either party.

19. Upon successful completion of the terms of this Contract as referenced in Paragraph 5 above, SCH shall submit to the Department a written notice of completion. Once the Department acknowledges satisfactory completion of the Contract terms, the Department,

under its authority to enforce CERCLA, 42 U.S.C. §§ 9601, et seq., pursuant to the HWMA, S.C. Code Ann. § 44-56-200, will give SCH a Certificate of Completion that provides a covenant not to sue SCH, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns for Existing Contamination, except for releases and consequences that SCH causes. In consideration of this liability protection from the Department, SCH agrees not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

20. If hazardous substances in excess of residential standards exist at the Property after SCH has completed the actions required under this Contract, land use restrictions shall be defined in the Certificate of Completion and the Department shall enter into a restrictive covenant with SCH. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of SCH and witnessed, signed, and sealed by a notary public. SCH shall file this restrictive covenant with the Register of Mesne Conveyance or Deeds in Charleston County. The signed covenant shall be incorporated into this contract as an Appendix. With the approval of the Department, the restrictive covenant may be modified in the future if: (a) additional remedial activities are carried out which meet appropriate clean up standards at that time; (b) a significant change in law requiring remediation occurs; or (c) circumstances change such that the restrictive covenant would no longer be applicable.

21. SCH specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, SCH is responsible and liable for any and all contamination it causes or contributes to the Site. Should environmental contamination neither previously-identified nor identified during the performance of response actions

required under this Contract be discovered at the Site after the execution date of the Certificate of Completion, the burden is on SCH to demonstrate to the Department's satisfaction that the contamination was not caused by SCH.

22. SCH and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should SCH elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that no environmental or physical hazards exist at the Site as a result of SCH's actions. The Department may terminate this Contract only for cause, which may include but is not limited to the following: (a) events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract; (b) failure to complete the terms of this Contract; or (c) additional contamination of the Site caused by SCH.

23. If SCH provides the Department with false or incomplete information, or if SCH's business activities on the Property or use of the Property change such that they are inconsistent with the terms and conditions of this Contract, then the releases/contribution protection extended to SCH, its Non-Responsible Party lenders, parents, subsidiaries, successors, and assigns, shall become null and void.

24. SCH acknowledges that the Department will not grant or will revoke liability protection if SCH acquires the Contract or a Certificate of Completion by fraud, misrepresentation, knowing failure to disclose material information, or failure to satisfactorily complete the approved Work Plan or terms of this Contract.

25. All correspondence which may or are required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (i) regular U.S. mail, (ii) certified or registered mail, postage prepaid, return receipt requested, (iii) by nationally recognized overnight delivery service company or (iv) by

telephone facsimile addressed to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

The Department [including five (5) copies of all work plans and reports, except one (1) copy of the Health and Safety Plan]:

Ms. Jo Cherie Overcash
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

SCH

John C. Darby
211 King Street, Suite 300
Charleston, South Carolina 29401

Robert L. Freeman
17 Lockwood Drive, 2nd Floor
Charleston, South Carolina 29401

Perrin Q. Dargan, III
Robertson & Hollingsworth
177 Meeting Street, Suite 300
Charleston, South Carolina 29401

Any notice given hereunder shall be deemed delivered when, if sent by mail, the return receipt is signed or refusal to accept the notice is noted thereon or, if sent by recognized overnight courier when the notice is actually delivered or refused as reflected in the courier company's delivery records or if sent via facsimile upon receipt of confirmation by the sender that the facsimile has been received.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

DATE: _____
Columbia, South Carolina

Patrick T. (Pat) Walker, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Legal Office

DATE: _____

SHIPYARD CREEK HOLDINGS, LLC

Signature

DATE: _____

Printed Name and Title

DATE: _____

APPENDIX A